

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

**PLAINTIFF CALLAWAY GOLF COMPANY'S MEMORANDUM IN SUPPORT  
OF ITS UNOPPOSED MOTION TO ATTACH THE CORRECT EXHIBIT C TO  
ITS COMPLAINT**

This is a patent case, in which Callaway Golf alleges that Acushnet has infringed four patents on golf ball technology: U.S. Patent Nos. 6,210,293, 6,503,156, 6,506,130, and 6,595,873. Discovery is currently underway, and the case is set for trial on December 3, 2007.

When Callaway Golf initially filed its Complaint on February 9, 2006, it inadvertently attached a copy of the wrong patent – U.S. Patent No. 6,503,130 rather than U.S. Patent No. 6,506,130 – as Exhibit C. [Declaration of Thomas Halkowski, ¶ 2.]<sup>1</sup> The mistake has not caused any confusion, because the text of the Complaint itself consistently refers to the correct patent number, and the parties have proceeded under that understanding. Moreover, it is difficult to imagine anyone being confused into believing Callaway Golf actually was asserting the mistakenly-attached patent, because it is assigned to Samsung Electronics and relates to semiconductor processing, not golf balls. Defendant, Acushnet, has agreed not to oppose this Motion to substitute the correct patent as Exhibit C.

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<sup>1</sup> A copy of the correct U.S. Patent No. 6,506,130 is attached to the supporting declaration of Thomas Halkowski as Exhibit A.

Accordingly, pursuant to Fed. R. Civ. P. 15(a), Callaway Golf respectfully requests leave to file a corrected copy of its Complaint, this one simply substituting as Exhibit C a correct copy of U.S. Patent No. 6,506,130. *See In re Burlington Coat Factory Securities Lit.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (leave to amend shall be “freely given when justice so requires”).

The parties have met and conferred, and Acushnet has agreed not to oppose this motion. [Declaration of Thomas Halkowski, ¶ 4.]<sup>2</sup>

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<sup>2</sup> On June 15, 2006, Callaway Golf file a separate motion seeking leave to amend its complaint to add a related breach of contract claim. Acushnet opposed that motion, and it is still pending before this Court. Acushnet’s agreement of non-opposition to this motion is only with respect to correcting Exhibit C to the Complaint.

Dated: September 28, 2006

FISH & RICHARDSON P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2006, I electronically filed with the Clerk of Court **PLAINTIFF CALLAWAY GOLF COMPANY'S MEMORANDUM IN SUPPORT OF ITS STIPULATED MOTION FOR LEAVE TO AMEND ITS COMPLAINT** using CM/ECF which will send electronic notification of such filing(s) to the following Delaware counsel. In addition, the filing will also be sent via hand delivery:

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I hereby certify that on September 28, 2006, I have mailed by United States Postal Service, the document(s) to the following non-registered participants:

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